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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

October 25, 1995

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In Reply Refer To:
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In re: Word Broadcasters, Inc.
WWCM(AM) Ypsilanti, Michigan
BP-930811AC

Gentlemen:

This letter concerns: (1) the referenced major change application, filed August 11, 1993 by Word Broadcasters, Inc. ("Word") and granted by the Commission on September 30, 1994, for a construction permit to modify AM Station WWCM's facilities; (2) the informal objection, dated September 26, 1994 but received October 4, 1994, filed by Koch Broadcasting Corporation ("Koch") against grant of the referenced application; (3) the petition, filed November 4, 1994 by Koch, for reconsideration of the Commission's action; (4) the Motion to Stay filed November 25, 1994 by Koch; and (5) the responsive pleadings.¹ For the reasons detailed below, Koch's objection and reconsideration will be dismissed and its motion for stay denied.

The Commission's grant of the referenced major change application authorized Word to make certain changes to its transmitting antenna at a site adjacent to Koch's site for AM Station WSDS (Salem Township, Michigan). This grant specifically placed responsibility on Word "for installation and continued maintenance of detuning apparatus necessary to prevent

¹These pleadings include Word's November 14, 1994 Opposition to Petition for Reconsideration and Motion to Stay, Koch's November 25, 1994 Reply to Opposition, Word's December 2, 1994 Opposition to Motion to Stay, Word's December 21, 1994 Motion for Leave to Respond, Word's December 21, 1994 Response to Reply, and Koch's January 4, 1995 Opposition to Motion for Leave to Respond/Contingent Motion for Leave to Reply.

adverse effects upon [WSDS]'s radiation pattern," required that Word conduct a partial proof of performance to establish that WSDS's array was not adversely affected, and ordered Word to submit these results to the Commission either prior to or simultaneous with the filing of its application for license to cover the referenced permit.

Koch's objection argued that the alleged "problems and delays" it experienced during Word's prior modification of its facilities mandated the inclusion of additional conditions to the referenced permit. We were unable to consider Koch's objection, prior to our grant of Word's permit, however, because the pleading itself was procedurally defective. Specifically, informal objections must be filed before Commission action on any application for an instrument of authorization. See 47 C.F.R. § 73.3587. Koch's objection was received by the Commission four days after grant of the referenced application, and it must therefore be dismissed as untimely.

Turning to Koch's November 25, 1994 Motion to Stay, our analysis concludes that the pleading must be denied, most notably, for failing to establish that the grant of Word's recent modification, as conditioned, will cause it to suffer irreparable injury if not stayed. Virginia Petroleum Jobbers Association v. FCC, 259 F. 2d 921 (DC Cir. 1958). Specifically, the conditions to the grant and the associated Commission approvals of compliance therewith, are designed as a safeguard to insure that Koch will not be irreparably injured as a result of WWCM's modified operation.

Finally, because Koch did not timely file an informal objection or petition to deny the WWCM modification application, and has not shown good cause for its failure to participate at that stage of the proceeding, we will dismiss its petition for reconsideration on procedural grounds. See 47 C.F.R. § 1.106(b)(1).²

Moreover, we find that the petition otherwise fails to demonstrate that the public interest would be served by reconsideration of our action below. In that regard, we note that Word bears responsibility, as "newcomer" to the permitted site, to resolve any interference caused to other pre-existing facilities in close proximity. Midnight Sun Broadcasting Co., 11 FCC 1119 (1947). See also, Sudbrink Broadcasting of Georgia, 65 FCC 2d 691 (1977); Jesse Willard Shirley, 24 RR 2d 982 (1972); Jack Straw Memorial Foundation, 35 FCC 2d 397, recon. denied 37 FCC 2d 544 (1972); and Broadcast Corp. of Georgia (WVEU-TV), 96 FCC 2d 901 (1984). Koch is free to initiate its own testing procedures to assure itself of Word's compliance with our Midnight Sun policy and is in no manner bound to accept blindly any filtering equipment to be installed at WSDS's facilities. We note further that this responsibility clearly requires that Word is financially responsible for compliance with this

² Interested parties are charged with constructive notice of an application by virtue of the release of the Commission's Public Notice announcing acceptance of the application. High Country Communications, 4 FCC Rcd 6237, 6238 n. 2 (1989). In the instant matter, the referenced application was accepted and a September 16, 1994 closing date for the filing of petitions to deny was listed in the Commission's August 15, 1994 Public Notice, (Report No. A-187).

policy. Broadcast Corp. of Georgia, at 908; Sudbrink Broadcasting of Georgia, at 692. Finally, as was the case in WWCM's prior modification, no license to cover permitted facilities will be granted until the Commission is satisfied that all conditions to grant have been satisfied.

Accordingly, Koch's informal objection and petition for reconsideration ARE HEREBY DISMISSED, and its motion for stay IS HEREBY DENIED.

Sincerely,

A handwritten signature in black ink that reads "Dennis Williams". The signature is written in a cursive, flowing style.

for Linda Blair
Acting Chief
Audio Services Division
Mass Media Bureau